

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PARTNERS EQUITY CAPITAL : CIVIL ACTION  
COMPANY LLC :  
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 vs. :  
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 THOMAS J. PETERS M.D. :  
 doing business as :  
 OMEGA ORTHOPAEDICS :  
 :  
 :  
 THOMAS J. PETERS M.D. : NO. 05cv6297

MEMORANDUM - ORDER

YOHN, J.

JULY , 2006

Plaintiff, Partners Equity Capital Company LLC, has filed an amended motion for summary judgment, memorandum of law and statement of undisputed material facts in support of the motion. Defendants, Thomas J. Peters, M.D. doing business as Omega Orthopaedics, and Thomas J. Peters, M.D., individually, have not filed a response to any of the three documents. Plaintiff has filed a separate, short and concise statement of the material facts as to which it contends there is no genuine issue to be tried. Defendants have not filed a response and, therefore, in accordance with paragraph 7 of the court's scheduling order dated March 9, 2006 the factual assertions by the plaintiff "shall be deemed admitted unless controverted by the statement required to be served by the opposing party."

The admitted facts are as follows:

1) Defendants executed the lease documents. Plaintiff made no representations to the defendants concerning the value or capabilities of the equipment or concerning the insurance coverage available for the services provided by the equipment. The defendants have no evidence supporting their claim that plaintiff had knowledge of any representations made by the supplier to the defendants. Defendants also have no evidence supporting their claim that an agency relationship

existed between the plaintiff and the supplier.

2) Defendants defaulted under the lease after making the first ten payments due thereunder. Defendants have admitted they have no defenses to the enforcement of the lease as written raising only the defenses to enforcement that the fictitious entity and the individual sued by the plaintiff do not exist, that the defendants did not execute the lease agreement and that the supplier of the equipment made representations that were binding on the plaintiff. Because defendants have admitted that they did execute the lease (and thereby implicitly admitting that they do exist), that the plaintiff made no representations to the defendants concerning the equipment, that plaintiff had no knowledge of any representations made by the supplier to the defendants concerning the equipment, and that plaintiff was not an agent of the supplier, the defendants have abandoned the only defenses they attempted to raise to the enforcement of the lease.

3) The amount of past due payments due under the lease is \$166,399.86. The total amount of taxes due on the outstanding balance is \$14,235.87. The equipment purchase option under the lease is \$100.00 and late fees are \$313.96. The total amount of attorneys' fees incurred in enforcing the lease at the time of plaintiff's filing of its amended motion for summary judgment, which fees are recoverable pursuant to the terms of the lease and the Uniform Commercial Code as adopted in Pennsylvania, is \$14,600.00. The sum netted by the plaintiff through the resale of the equipment is \$56,052.87.

4) Based upon a balance due of \$166,399.86 plus taxes of \$14,235.87, the equipment purchase option of \$100.00, late fees of \$313.96 and counsel fees of \$14,600.00, less the sum netted by the plaintiff through the resale of the equipment of \$56,052.87, the amount due and owing to the plaintiff is \$139,596.82.

Judgment will be entered in that amount against the defendants, jointly and severally.

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O R D E R

**AND NOW**, this 6<sup>th</sup> day of July, 2006, upon consideration of plaintiff's amended motion for summary judgment (Document No. 19) and plaintiff having filed no response thereto, **IT IS HEREBY ORDERED** that the motion is **GRANTED** and judgment is entered in favor of the plaintiff, Partners Equity Capital Company LLC, and against the defendants, Thomas J. Peters, M.D., individually, and Thomas J. Peters, M.D., d/b/a Omega Orthopaedics, jointly and severally in the amount of \$139,596.82.

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William H. Yohn Jr., Judge